

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

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| DR. MARTHA E. QUICK |) | |
| |) | |
| Appellant, |) | OSPI 267-96 |
| |) | |
| vs. |) | DECISION AND ORDER |
| |) | |
| BOZEMAN SCHOOL DISTRICT #7, |) | |
| BOARD OF TRUSTEES, |) | |
| |) | |
| Respondents. |) | |
| |) | |

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PROCEDURAL HISTORY

Dr. Martha Quick is appealing the August 23, 1996, decision of Gallatin County Superintendent of Schools, Jill Richards, affirming Dr. Quick's termination by the Trustees of Bozeman School District No. 7 [hereinafter "the District" or "the Trustees"]. Superintendent Richards found that substantial, credible evidence supported the reasons the District gave for terminating Dr. Quick and those reasons constituted good cause for termination.

Dr. Quick was employed by the District from 1984 through 1996. She was tenured at the time of her termination in 1996 and the statutory rights and procedural protections of § 20-4-204, MCA, (1995) applied. (Section 20-4-204 was amended during the 1997 Legislative session. This case was decided under the 1995 statute and is not affected by the change in law.)

Dr. Quick and various administrators in the District had a history of poor work relationships. The problems escalated in

the Fall of 1995 when the District interviewed candidates for several administrative positions. A new middle school was planned to open for the 1996-97 school year and the high school principal planned to retire. Dr. Quick applied for both positions. She was selected for an interview for the middle school principal position but not for the high school position. Following her interview, Dr. Quick simultaneously complemented the chairman of the District's interview committee on the selection process used by the District and sent a letter to the editor of the Bozeman Chronicle highly critical of the selection process. Later, after both positions were filled, she filed a grievance that was heard on April 9, 1996. The Board denied the grievance.

On April 11, 1996, District Superintendent Paula Butterfield notified Dr. Quick that she was recommending the Trustees terminate Dr. Quick's employment. The notification included 15 paragraphs. During the hearing before the County Superintendent, the District withdrew 6 paragraphs and portion of one paragraph (see Findings of Fact #33). The remaining notification of termination was:

1. This recommendation is based on a multitude of reasons, the most significant of which is the fact that none of the administrators in buildings where an assistant principal position is available are willing to have Dr. Quick as a part of their administrative team nor do they wish to have her assigned as a teacher in the classroom.
2. Godfrey Saunders, principal-elect of Bozeman High School, has stated that if Dr. Quick is assigned to the high school as an assistant principal, he will request that the Board of Trustees release him from his

contract as high school principal. Diane McDonough, principal of Sacajawea Middle School, has stated that she would be unwilling to continue as the middle school principal of Dr. Quick were reassigned to the Sacajawea Middle School. Dr. Anne Olson, Chief Joseph Middle School Principal, based upon her prior supervision of Dr. Quick which resulted in less than satisfactory evaluations of Dr. Quick's performance and her transfer to an assistant principal position at the high school, is also unwilling to have Dr. Quick retransferred to Chief Joseph Middle School.

3. Dr. Quick has communicated disingenuously with Godfrey Saunders, Diane McDonough and Anne Olson, resulting in their loss of faith in her integrity, her judgment, and her professionalism.

. . . .

6. Dr. Quick has demonstrated inadequate and poor professional judgment. Consequently, she has lost the confidence of many members of the administrative team. The Assistant Superintendent of Curriculum and Instruction and the Director of Special Services have both indicated they have serious concerns regarding her trustworthiness. Therefore, they have indicated they are unwilling to have her transferred to their respective departments.

. . . .

11. Dr. Quick's presence in the District -- particularly as a member of the administrative team -- has been a polarizing factor which has damaged the ability of others to work with her.
12. Dr. Quick has failed to demonstrate loyalty to the School District by ignoring policies and procedures designed to accomplish the School District's educational goal by promoting cooperation through working within the chain of command.
13. Dr. Quick has demonstrated her inability to work as a team member and to contribute positively to the total educational effort of our District. Dr. Quick's conduct during the past several months has left me with the unhappy conclusion that little or no hope exists that she will or can reform.

14. As the Superintendent of the Bozeman School District, I have been delegated the duty and the responsibility to foster an environment which promotes positive educational opportunities for all our students. I cannot honestly and effectively carry out the goals of the Board of Trustees if I do not have the trust and confidence of the administrative team with whom I work and through whom I necessarily act. The educators who comprise Bozeman School District's administrative team must collectively inspire our students as well as reflect what is best about our District.
15. My recommendation is neither easily nor lightly reached. It is not based upon a divergence of philosophical viewpoint, but rather upon my reluctant, yet unequivocal, perception that Dr. Quick's continued employment with the Bozeman School District is and would be profoundly detrimental to the mission of the District. . . . my lack of trust and confidence in Dr. Quick's judgment, professionalism, and integrity have been profoundly and irreparably undermined.

(Superintendent's Exhibit #1, Findings of Fact #33, and Conclusions of Law #5.)

The District Board of Trustees heard the matter on April 25, 1996, and voted to terminate Dr. Quick. She appealed to the County Superintendent who conducted a 10 day hearing. On August 23, 1996, the County Superintendent issued her Findings of Fact, Conclusions of Law and Order that the procedural and substantive requirements of § 20-4-204 (1995) had been met, that the District had supported its stated reasons for terminating Dr. Quick with substantial, credible evidence, and that those reasons constituted good cause to terminate Dr. Quick.

Dr. Quick appealed to the State Superintendent, then filed a motion to disqualify the State Superintendent from hearing the matter. The motion was denied in an Order dated November 7, 1996. Having reviewed the County Superintendent's Findings of

Fact, Conclusions of Law and Order, the record, the parties' briefs and oral argument, this State Superintendent of Public Instruction now enters the following:

ORDER

Substantial, credible evidence supports the County Superintendent's Findings of Fact and her Conclusions of Law are correct. The County Superintendent's Order is affirmed.

Standard of Review

This Superintendent's review of a county superintendent's order is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125.

Findings of fact are reviewed under a clearly erroneous standard. Harris v. Trustees, Cascade County School Districts No. 6 and F, 241 Mont. 274, 786 P.2d 1164 (1990). Colstrip Board of Trustees, Rosebud County v. Elmer Baldridge, 264 Mont. 199, 870 P.2d 711, 714 (1994). The State Superintendent may not substitute her judgment for that of a county superintendent as to the weight of the evidence on questions of a fact. Findings are upheld if supported by substantial, credible evidence in the record.

Conclusions of law are reviewed to determine if the agency's interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990).

Discussion

Both the District and Dr. Quick offered voluminous evidence of their long history of employment disputes. During her years of employment, Dr. Quick had disagreed with many of the District's management and personnel decisions. She freely shared her views with the administration, with fellow employees, and with the Bozeman community at large. The District had previously documented several occasions in which her poor job performance as a member of the administrative team made successful management of the school district more difficult (Petitioner's Exhibit A).

Dr. Quick raised 11 issues on appeal (See September 20, 1996, Notice of Appeal) that were grouped into six issues in her brief on appeal:

1. Findings of fact 3, 4, 8, 12, 13, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 46, are not supported by substantial credible evidence and conclusions of law, 5, 8, 9, 10 and 11 are wrong.
2. The Order did not address statutory and contractual due process including the requirement in § 20-4-204 that the notice of termination give clear, specific and explicit reasons for termination.
3. Free speech violations were overlooked.
4. Retaliation evidence was ignored.
5. Evidentiary ruling during the hearing were wrong.
6. No good cause remained for termination after the revision of the notice of termination.

(Petitioner's Opening Brief, Pages 1-5.)

These six issues are discussed sequentially below.

Issue 1. A. Findings of fact. The County Superintendent heard evidence over a 10 day period. The transcript of the

hearing is more than 1700 pages. Numerous witnesses testified and over 100 exhibits were offered. The County Superintendent listened to both Dr. Quick's and the District's evidence and she found the District's evidence credible. This is her prerogative as the trier of fact.

There is substantial, credible evidence in the record to support the County Superintendent's findings. The District offered testimony from five administrators who recounted specific instances that established Dr. Quick's performance as an administrator was substandard and that she was unwilling or unable to work cooperatively with them. For example, Dr. Quick had lied (Godfrey Sanders - TR 41 and Diana McDonough - TR 568), twisted conversations in ways that were not intended and lacked integrity, (Pat Boyer -- TR 79-80), failed to follow through on tasks, refused to accept work assignments, undermined her supervisor's authority, made management decisions from the perspective of her good rather than the good of students (Anne Olson Deposition, Pages 18-21), made an effort to disrupt and create problems, and was untrustworthy (Bryan Dunn Deposition, Pages 43-44). The County Superintendent found these witnesses' testimony credible and persuasive. She believed the District's evidence in support of its reasons for terminating Dr. Quick.

On appeal, Dr. Quick argues that the District's evidence was not persuasive and that the County Superintendent's judgment on credibility should be set aside. This Superintendent does not agree. It is well settled law that the reviewer of an

administrative decision may not substitute her judgment for that of the trier of fact as to the weight of the evidence on questions of a fact. Findings are upheld if supported by substantial, credible evidence in the record. A finding is clearly erroneous only if a "review of the record leaves the Court with the definite and firm conviction that a mistake has been committed." State Compensation Mutual Insurance Fund v. Lee Rost Logging, 252 Mont. 97, 102, 827 P.2d 85, 88 (1992).

Although Dr. Quick offered evidence to the contrary, the County Superintendent weighed the conflicting evidence and found the District's witnesses and exhibits to be credible. The County Superintendent was persuaded that the reasons the District gave for terminating Dr. Quick were true. There is substantial credible evidence in the record to support her findings that the District's reasons for terminating Dr. Quick were true. A review of the record does not show that a mistake has been made.

B. The County Superintendent's conclusion that the reasons for termination constituted good cause is correct as a matter of law. The Montana Supreme Court has held that school trustees have wide discretion to run a school and lack of integrity or loss of confidence due to a teacher's actions and inactions are good cause to terminate. Yanzick v. School District, 196 Mont. 375, 641 P.2d 431 (1982), Carbon County District v. Spivey, 262 Mont. 513, 866 P.2d 208 (1993).

The record shows that the District terminated Dr. Quick because of her inability to do her job -- she could not work

effectively as an administrator. Her inability to perform her job as an administrator was attributable to poor job performance and work skills and lack of integrity -- lying, refusing to accept her supervisor's decisions, refusing to perform assigned tasks, undermining authority, etc. The District had lost confidence in her ability and integrity based on her poor performance as an administrator.

Issue 2. Statutory and contractual due process rights. Dr. Quick argues that the Order does not address her issue of statutory due process rights. This is incorrect. The County Superintendent addressed the issue but did not agree with Dr. Quick that her procedural rights were violated. Conclusions of Law 4 and 5 specifically address the statutory issue she raised at the hearing. Section 20-4-204 (1995) requires that a recommendation for termination state clearly and explicitly the specific reason or reasons leading to the recommendation for termination. The County Superintendent concluded that paragraphs 1, 2, 3, 6, 11, 12, 13, 14 and the relevant portions of paragraph 15 meet this requirement. This Superintendent agrees.

These paragraphs are repeated verbatim at the beginning of this Order. The language is sufficiently clear and explicit. A reasonable person reading these statements would have adequate notice of the reasons for termination and an opportunity to prepare. In addition, the hearing before a County Superintendent is "de novo". Administrative rules provide for specific discovery rights (ARM 10.6.109 - 113) which Dr. Quick exercised.

She subpoenaed over 80 witnesses and compiled over 150 exhibits in her defense.

Dr. Quick did not raise the issue of contractual procedural rights before the County Superintendent. She raised it for the first time on appeal. See Statement of Issues, Pages 2-3, May 8, 1996, Appeal to County Superintendent. Consequently, there are no findings or conclusions on this issue to review in the County Superintendent's Order. This Superintendent's review is limited to the record established before the County Superintendent. An issue properly heard in an administrative hearing cannot be raised for the first time on appeal. See, for example, Parini v. Missoula County High School D No. 1., Ed.Law 74 (1997), Mont. Sup. Ct., Cause No. 96-696, July 3, 1997.

Issue 3. Free speech. Dr. Quick maintains that the County Superintendent overlooked First Amendment violations by the District. The County Superintendent did not overlook this issue; she was not convinced First Amendment violations occurred.

The fact that Dr. Quick sent a letter to the Bozeman Chronicle was undisputed. What Dr. Quick did not establish was that she was terminated because she sent the letter. Having failed to establish that she was terminated for exercising her First Amendment rights, the County Superintendent did not need to address the question of law such a fact would raise.

The fact that an employee has exercised First Amendment rights does not constitute good cause to terminate but the

exercise of First Amendment rights does not prevent termination on other, independent grounds that do, in fact, constitute good cause. A person who performs her job poorly is capable of exercising her First Amendment rights as freely as a person who performs her job well.

Issue 4. Retaliation. Dr. Quick argues that the County Superintendent ignored her evidence of retaliation and should have found that the District terminated her for her November 1995, letter to the editor or for filing grievances. The County Superintendent did not ignore Dr. Quick's evidence concerning retaliation. Her Order acknowledges both claims of retaliation. See Findings of Fact 10, 11, 22, 23, 24, 25, 26 and 46. The County Superintendent was not persuaded that the termination was based on retaliation.

An employee cannot be terminated in retaliation for engaging in protected activities, such as filing a grievance, but retaliation is not presumed. The burden of proof is on the person asserting retaliation to establish that it occurred. Dr. Quick's evidence did not persuade the County Superintendent that retaliation had occurred and the record shows that Dr. Quick was not terminated for writing letters or filing grievances.

Dr. Quick was terminated because she could not perform her job as an administrator. As discussed above, the fact that Dr. Quick engaged in activities that could not constitute grounds for termination does not preclude other independent events occurring that establish good cause to terminate. Dr. Quick's job required

her to effectively participate in the successful management of the school. The District terminated her because her refusal to cooperate with her co-workers prevented her from effectively performing her job.

Issue 5. Evidentiary rulings. Dr. Quick maintains that the record is replete with evidentiary errors. She only clearly raised two issues on appeal, however -- the denial of her July 17, 1996, motion-in-limine to exclude evidence of any events prior to April 11, 1993, (see County Superintendent record, document 17) and the admission of Quick Exhibit A.

A. Motion-in-limine to exclude any evidence related to events prior to April 11, 1993. The termination of a tenured teacher is a serious matter that must be considered in the totality of the circumstances. There is no hard and fast rule concerning what period of time is relevant. A district cannot rely on incidents from the distant past as grounds for termination, but a district can introduce past incidents that are relevant to the current problems to show a pattern and practice or an on-going problem. It was, therefore, within the County Superintendent's discretion (and not reversible error) to deny a motion-in-limine to exclude any and all evidence prior to 1993.

B. Exhibit A. The specific document that Dr. Quick now takes exception to -- her notice of probation for the school year 1991-92 that was part of Dr. Quick's personnel file -- was offered by Dr. Quick as part of Petitioner's Exhibit A. This exhibit was admitted over the objection of the School District

(See TR 469-482). Dr. Quick is correct that the 1991-92 probation was irrelevant in this proceeding, but the District did not offer the document into the record. The Transcript at 471 shows the following objection by the District's attorney.

School District objects to the introduction of Petitioner's Exhibit A, based on the fact that it was not listed as an exhibit. There has been no attempt to seek the exhibit through discovery to give the District proper time to seek protection of the file. Certain documents have been removed and identified from that file, and the Petitioner should be limited to those documents she has previously listed and identified. The personnel file has not been listed as an exhibit, nor was it officially requested in the subpoena. It's simply here as a matter of courtesy to verify the documents that have been identified.

There followed a lengthy discussion on the record in which the District argued against the introduction of the personnel file and Dr. Quick's attorney argued for its admission. The County Superintendent denied the District's objection and ruled in favor of Dr. Quick (TR 479).

Having offered the entire file, Dr. Quick now takes exception to the notice of probation being part of the record relied on by the County Superintendent. This is not grounds for setting aside the County Superintendent's decision. A party who fails to object to evidence at a hearing is barred from raising the issue on appeal. Rule 103, Montana Rules of Evidence, and see, for example, Flanigan v. Prudential Fed. S&L Ass'n, 221 Mont. 419, 720 P.2d 257, 43 St. Rep. 941 (1986). It follows that a party cannot argue that a ruling in his favor on an evidentiary ruling at hearing is grounds for reversal on appeal.

Dr. Quick's attorney wanted her personnel file admitted into the record and adamantly argued for the admission of the entire file over the objection of the District. Having prevailed upon the County Superintendent to admit the evidence at hearing, Dr. Quick cannot now argue that the admission of the evidence constitutes reversible error.

Issue 6. Revision of the notice of termination. During the hearing the District withdrew paragraphs 4, 5, 7, 8, 9, 10 and portions of paragraph 15 from its notice of reasons for termination. (Superintendent's Exhibit 1.) Dr. Quick argues that allowing the District to withdraw these reasons for termination during the hearing constitutes reversible error.

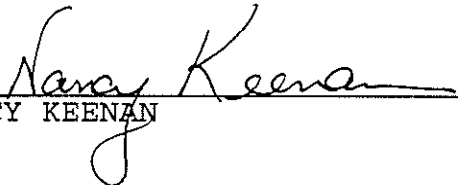
This Superintendent has adopted the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, (see, ARM 10.6.125) and may reverse or modify a decision only if substantial rights of the appellant have been prejudiced. Dr. Quick was not prejudiced by the County Superintendent granting the District's motion to amend its notice and withdraw reasons for termination. Dr. Quick benefitted because the District had fewer grounds for establishing good cause to terminate. The County Superintendent's decision to allow the District to amend its notice of termination is not grounds for reversing or remanding the Order on appeal.

CONCLUSION

The tenure of a teacher is a substantial right that cannot be terminated without good cause. A school district bears the

burden of proving that good cause to terminate exists. Bozeman School District No. 7 offered substantial credible evidence that Dr. Quick was unable to successfully perform her duties as a school administrator. The District proved it had good cause to terminate Dr Quick and the County Superintendent correctly upheld the District's decision to terminate. The Order is AFFIRMED.

DATED this 25th day of August, 1997.



NANCY KEENAN

QUICK.267

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 25th day of August, 1997, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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